

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Case No. 00-6023 CIV-Hurley
Magistrate Lynch

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R/S ASSOCIATES, A FLORIDA LIMITED
PARTNERSHIP, AND DAN SHOOSTER,

Plaintiffs

vs.

BOB YARI, AND FORUM ARLINGTON
PROPERTIES, LTD.

Defendants

**DEFENDANTS' MOTION FOR RELIEF FROM
CONSENT FINAL JUDGMENT**

Comes now the Defendants, Bob Yari and Forum Arlington Properties, Ltd.,
by and through their undersigned counsel, pursuant to Fed. R. Civ. P. 60, to file
their Motion for Relief from the Consent Final Judgment, entered on August 23,
2001.

1. On motion of Plaintiffs, the Court entered the Consent Final
Judgment, which is attached as Exhibit A, on August 23, 2001, before the
Defendants could respond to the motion.

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2. In their motion for the entry of the judgment, Plaintiffs averred that Defendants did not timely "pay" Plaintiffs \$50,000 pursuant to the parties' Settlement Agreement. Plaintiffs neglected however to reveal to the Court that Defendants timely tendered payment of \$50,000 on June 21, 2001 and that a bank error caused a brief delay in Plaintiffs receipt of payment.

3. The Affidavits of Bob Yari and Shannon Wexler, on behalf of Bank of America, are attached as Exhibits B and C.

4. These Affidavits demonstrate that Defendants timely tendered full payment to Plaintiffs by Federal Express on June 21, 2001, Bank of America erroneously returned Defendants' check for insufficient funds on or about June 26, 2001, and immediately upon receiving notice of the bank's error, Defendants promptly wired funds to cover the returned check to the trust account of Plaintiffs' counsel on June 29, 2001.

5. Given that Plaintiffs were not materially injured by the brief delay in their receipt of payment, it would be inequitable for Defendants, who timely tendered payment, to be forced to pay a \$10,000 penalty and to have an injunction entered against them, owing to a bank error over which Defendants had no control.

WHEREFORE, Defendants respectfully request that the Court vacate the Consent Final Judgment and enter such other relief as it deems appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing instrument has been furnished by U.S. mail to Keith A. Goldbaum, Esquire, Friedman, Rosenwasser & Goldbaum, P.A., 5355 Town Center Road, Suite 801, Boca Raton, Florida 33486, this 28th day of August, 2001.

Respectfully submitted,

NASON, YEAGER, GERSON, WHITE & LIOCE, P.A.
1645 Palm Beach Lakes Boulevard, Suite 1200
West Palm Beach, Florida 33401
Telephone: (561) 686-3307
Facsimile: (561) 686-5442
E-mail: ejames@nygwl.com
Attorneys for Defendants
Florida Bar No.: 791709

By: Elaine Johnson James
ELAINE JOHNSON JAMES

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UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO. 00-6023 CIV HURLEY

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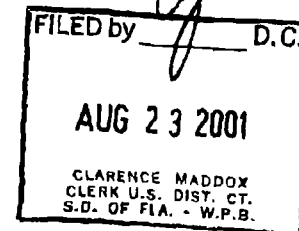
RIS ASSOCIATES, a Florida Limited
Partnership and DAN SHOOSTER,

Plaintiffs,

vs.

ROBERT YARI and FORUM ARLINGTON
PROPERTIES, LTD. AND ALLIANCE
COMMERCIAL MANAGEMENT,

Defendants.



CONSENT FINAL JUDGMENT AND PERMANENT INJUNCTION

Plaintiffs, R/S Associates, a Florida Limited Partnership and Dan Shooster (collectively "Plaintiffs") and Defendants, Robert Yari and Forum Arlington Properties, Ltd., (collectively "Defendants"), stipulate and consent to the following:

WHEREAS, Defendants adopted and began using trademarks in the United States which allegedly infringe Plaintiffs' registered trademarks: Festival Marketplace Mall 3101; Festival Marketplace Mall/Logo" #3102; Winners! Arcade/Design #3103; Winners! Arcade/Design #3121; Festival Marketplace #3104; Festival Marketplace #3105; Shopaholic #3112; Festiventures #3120; Festiventures #3112; Fesitvalue #3111; Festivalue #3119; Fleabytes #3110; Fleabytes #3118; Flea Market Mall #3117; Flea Market Mall #3108; Festival Flea Market/Design #3107; Festival Flea Market/Design #3115; Flea T.V. #3106; Flea T.V. #3114; Festival Marketplace/Design #3123; and/or International Festival Center trademark ("The Plaintiffs' Marks");

EXHIBIT A

WHEREAS, based upon Plaintiffs' good faith prior use of the Plaintiffs' Marks, Plaintiffs have superior and exclusive rights in and to the Plaintiffs' Marks in the United States and any confusingly similar names or marks;

WHEREAS, Defendants do not admit liability or wrongdoing as to Plaintiffs' claims, but have settled this matter for reasons of judicial economy.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. That Defendants, their agents, representatives, servants, employees, and all those acting in concert or participation therewith are hereby permanently enjoined, from utilizing any of Plaintiffs' Marks; from infringing, counterfeiting, or unlawfully diluting the Plaintiffs' Marks; from using the Plaintiffs' Marks, or any marks similar thereto, in connection with any shopping centers or malls; from unlawfully using any logo, trade name or trademark which may be calculated to falsely advertise the services or products of Defendants as being sponsored by, authorized by, endorsed by, or in anyway associated with Plaintiffs, provided however, that Defendants may use the present "Festival Marketplace" sign, located at the entrance of the Festival Discount Mall in Arlington, Texas, without the Plaintiffs' claiming that its use infringes on Plaintiff's rights.

2. Any party shall have the right to seek sanctions for contempt, compensatory damages, injunctive relief, attorneys' fees, costs, and such other relief deemed proper in the event of a violation or failure to comply with any of the provisions hereof. The prevailing party in any such proceeding shall be entitled to recover its attorneys' fees and costs.

Judgment shall be conclusive for purposes of collateral estoppel.

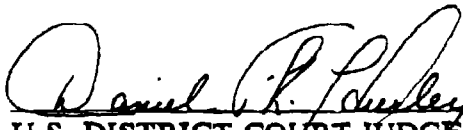
4. The parties' respective attorney's fees and costs incurred in connection with this action shall be borne as per the agreement of the individual parties in their Settlement Agreement.

5. Defendants shall pay Plaintiffs \$ 10,000, which is the amount set forth in Plaintiffs' Affidavit of Nonpayment dated 8/17/2001, within ten (10) days of the date hereof. ~~The failure to make this payment in accordance with the Court's final judgment shall be deemed a contempt of court.~~

6. This court will retain continuing jurisdiction over this cause to enforce the terms of this Consent Judgment and the Settlement Agreement between the parties.

DONE AND ORDERED in Chambers in West Palm Beach, Palm Beach County,

Florida this 22nd day of August, 2001.



U.S. DISTRICT COURT JUDGE
DANIEL T.K. HURLEY

Copies Furnished To:

Keith A. Goldbaum, Esquire
Friedman, Rosenwasser & Goldbaum, P.A.
5355 Town Center Rd. #801
Boca Raton, FL 33486

Elaine Johnson James, Esquire
Nason, Yeager, Gerson, White & Lioce, P.A.
1645 Palm Beach Lakes Blvd., Suite 1200
West Palm Beach, FL 33401

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UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Case No. 00-6023 CIV-Hurley
Magistrate Lynch

R/S ASSOCIATES, A FLORIDA LIMITED
PARTNERSHIP, AND DAN SHOOSTER,

Plaintiffs

vs.

BOB YARI, AND FORUM ARLINGTON
PROPERTIES, LTD.

Defendants

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

**AFFIDAVIT OF BOB YARI IN SUPPORT OF MOTION FOR
RECONSIDERATION OF CONSENT FINAL JUDGMENT**

Bob Yari, being duly sworn according to law, deposes and says:

1. I am over the age of twenty-one (21) years and otherwise competent to make an affidavit.
2. The following statements are true and are based upon my personal knowledge.
3. I am the President of Forum General, Inc., a Texas corporation.

EXHIBIT B

4. Forum General, Inc. is the general partner of Defendant, Forum Arlington Properties, Ltd.

5. On June 21, 2001, I caused the check attached hereto as Exhibit 1 payable to RS Associates in the amount of \$50,000 to be sent by federal express to Dan Shooster. The federal express air bill is attached hereto as Exhibit 2.

6. Immediately upon my receipt of notice that Bank of America had erroneously returned the check for insufficient funds, on June 29, 2001, I sent the facsimile attached hereto as Exhibit 3 to Michelle Wade of Bank of America instructing Ms. Wade to transfer \$50,000 from a Forum Arlington Properties, Ltd. account to First Union Bank for credit to the Mr. Shooster's attorneys, i.e., Friedman, Rosenwasser & Goldbaum, P.A., trust account. Mr. Shooster acknowledged receipt of these funds in his motion for the entry of a consent final judgment.

7. In addition, at the instruction of my attorney, as is reflected in her letter to Keith A. Goldbaum dated June 29, 2001, which is affixed hereto as Exhibit 4, I caused Bank of America to send a letter to Keith Goldbaum indicating that it had erred by returning the check for insufficient funds. The letter from Bank America dated July 2, 2001, is attached hereto as Exhibit 5. In the letter Ms.

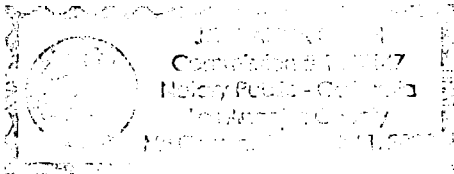
Wexler specifically states "The bank returned the check totaling \$50,000 erroneously."

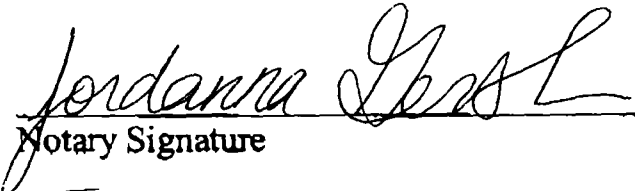
FURTHER AFFIANT SAYETH NAUGHT.



BOB YARI

SWORN TO AND SUBSCRIBED before me this 24 day of August, 2001, by Bob Yari, (X) who is personally known to me OR () ~~who produced~~ _____ as identification.





Notary Signature

JORDANNA GERSH

Print Notary Name

NOTARY PUBLIC
State of California at Large

My Commission Expires:

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Forum Arlington Prop, LTD

DBA Festival Discount Mall
10250 Wilshire Blvd
Suite 1050
Los Angeles, CA 90024

Bank of America
RE Treasury NC1-002-20-08
101 S. Tryon Street
Charlotte, NC 28555
111000025

10124

FIFTY THOUSAND AND 00/100 DOLLARS

TO THE
ORDER OF

RIS Associates

DATE

06/20/01

AMOUNT

\$50,000.00

⑈010124⑈ ⑆111000025⑆ 00139003854⑈

DATE: 06/20/01 CK#: 10124 TOTAL: \$50,000.00** BANK: ba6354 - 02401 Festival Operating
PAYEE: RIS Associates (ristes)

Property Account	Invoice	Description	Amount
02401 69680	062001	Settlement	\$50,000.00
			\$50,000.00

EXHIBIT B-1

Alliance Management Co., LLC

10850 Wilshire Blvd. Suite 1050
Los Angeles, CA 90024
Phone: 310-475-5819 Fax: 310-208-0715

June 29, 2001

Via Fax: 704-388-0479

Michelle Wade
Bank of America
Real Estate Treasury Services

Re: Forum Arlington Properties, Ltd
DBA Festival Discount Mall

Dear Michelle,

Please transfer \$50,000.00 (Fifty Thousand Dollars .00 cents) from:

FROM:
Acct. Name: Forum Arlington Properties, Ltd.
dba Festival Discount Mall
Acct. Number: [REDACTED]
Acct. Type: [REDACTED]

TO:
Bank Name: First Union Bank
Acct. Name: Friedman, Rosenwasser & Goldbaum, P.A., Trust Account
Acct. Number: [REDACTED]
ABA#: [REDACTED]

If you have any questions please feel free to contact me.

Sincerely,

Bob Yari

BY/mf

EXHIBIT B -3

NASON, YEAGER, GERSON, WHITE & LIOCE, P.A.

ATTORNEYS AT LAW

MELLON UNITED NATIONAL BANK TOWER

1645 PALM BEACH LAKES BOULEVARD

SUITE 1200

WEST PALM BEACH, FLORIDA 33401

ELAINE JOHNSON JAMES
Also Admitted to Pennsylvania

TELEPHONE (561) 686-3307

FACSIMILE (561) 686-3442

DIRECT DIAL
(561) 471-3524

E-MAIL ADDRESS:
ejames@nygwll.com

June 29, 2001

VIA FACSIMILE

Keith A. Goldbaum, Esquire
Friedman, Rosenwasser & Goldbaum
5355 Town Center Road, Suite 801
Boca Raton, Florida 33486

RE: Shooster v. Yari, our file no. 6074/13057

Dear Mr. Goldbaum:

This will confirm our conversation concerning the sums due your clients. I will ask Mr. Yari (a) to wire \$50,000 in accordance with your prior wiring instructions today and (b) to cause Bank of America to send you a letter via facsimile today, confirming that the bank erred when it returned the check for non-sufficient funds and there were ample sums in Mr. Yari's account to cover the check when it was presented to Bank of America.

You will review the letter from Bank of America and decide whether to recommend that Mr. Shooster forego the \$10,000 default payment. However, you made clear that Mr. Shooster is not waiving the right to receive the default payment and that he reserves the right to demand the default payment if he is not satisfied with the explanation given by Bank of America. Thank you for your courtesy.

Very truly yours,

NASON, YEAGER, GERSON, WHITE &
LIOCE, P.A.


Elaine Johnson James

cc: Mr. Bob Yari via facsimile

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EXHIBIT B-4

TOTAL P.02

Bank of America



Post-It™ brand fax transmittal memo 7671 # of pages > 1	
To: Dennis Brown	From: S. Wexler
Co: Alliance	Co: BofA
Dept:	Phone: 213-228-6031
Fax: 310-208-0715	Fax:

Bank of America
Global Treasury Sales
Real Estate West
CA9-706-03-05
555 South Flower Street, 3rd Floor
Los Angeles, CA 90071-2385

Tel 213.228.6031
Fax 213.228.5852

July 2, 2001

Mr. Keith Goldbaum
Friedman, Rosenwasser & Goldbaum
5355 Town Center Road, Suite 801
Boca Raton, FL 33486

Re: Alliance Management

Dear Mr. Goldbaum

In my previous letter I agreed to provide additional information surrounding a check received from Alliance Management. The bank returned the check totaling \$50,000 erroneously.

The customer service unit that supports the Alliance relationship has determined that an error occurred on the Alliance account, causing the check to be returned. Please do not hesitate to contact me with any questions you may have regarding this matter.

Sincerely,

Sharon O. Wexler
Assistant Vice President
Bank of America
213-228-6031

EXHIBIT B-5

UNITED STATES DISTRICT COURT FOR THE
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Magistrate Lynch

R/S ASSOCIATES, A FLORIDA LIMITED
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Plaintiffs

vs.

BOB YARI, AND FORUM ARLINGTON
PROPERTIES, LTD.

Defendants

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

AFFIDAVIT OF IN SUPPORT OF MOTION FOR
RECONSIDERATION OF CONSENT FINAL JUDGMENT

Shannon O. Wexler, Assistant Vice President, Bank of America,
being duly sworn according to law, deposes and says:

1. I am over the age of twenty-one (21) years and otherwise competent to make this affidavit.
2. The statements made in the Affidavit are true and are based upon my personal knowledge.
3. On or about June 26, 2001, Bank of America returned a \$50,000 check payable to RS Associates, drawn on the Forum Arlington Property, Ltd. Account, for insufficient funds.

EXHIBIT C

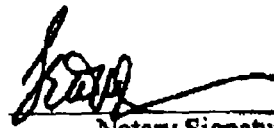
4. Upon investigation, Bank of America's customer service unit that supports various accounts held by Forum Arlington, Ltd. and related entities determined that an error occurred causing the check to be returned.

FURTHER AFFIANT SAYETH NAUGHT.


SHANNON O. WEXLER

SWORN TO AND SUBSCRIBED before me this 27th day
of August, 2001, by Shannon O. Wexler, () who is personally
known to me OR (X) who produced Creditable identification on hand
as identification.




Notary Signature
Tracee M. Johnson
Print Notary Name

NOTARY PUBLIC
State of California at Large

My Commission Expires: